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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.11.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL No.42 OF 2001

..

O.S. Ramaswamy .. Appellant
[Petitioner in
WP.No.22130/93].

vs.

1. Personal Assistant (G)
   To Collector of Madras
   Statutory Authority under
   The Tamil Nadu Court Fees &
   Suits Valuation Act, 1955
   Office of the Collector of Madras
   Rajaji Salai, Madras.

2. The State of Tamil Nadu
   rep. by the Collector of Madras
   Rajaji Salai, Madras. .. Respondents
   [Respondents in -do-].

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the Honourable Mr. Justice Y. Venkatachalam, dated 14.11.2000 made in W.P.No.22130 of 1993 presented under Article 226 of the Constitution of India, calling for the records relating to B.1/51038/89 dt.18.5.1992 passed by the first respondent and the consequent communication under A2/11623/92-93 dated 14.12.1993 of the second respondent and quash the same.

For appellant : Mr. K. Ramakrishna Reddy
for Mrs. Kalpa Reddy

For respondents : Mr. P. Subramanian
Government Advocate

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JUDGMENT

(Judgment of the Court was delivered by
P. Sathasivam,J.)

The above writ appeal is directed against the order of the learned single Judge dated 14.11.2000 made in W.P.No.22130 of 1993, in and by which the learned Judge, after finding no merit in the claim of the petitioner, dismissed the writ petition.

2. Heard Mr. K. Ramakrishna Reddy, learned counsel for the appellant and Mr. P. Subramanian, learned Government Advocate for the respondents.

3. According to the petitioner, his father O.S. Subramanya Iyer, left behind a Will dated 10.05.1979, under which he bequeathed the property bearing Door No.4, IV Main Road, Nehru Nagar, Adyar, Chennai in favour of the petitioner. Subsequently, he died on 17.03.1987 and the Will dated 10.05.1979 being his last Will and testament, the petitioner took out O.P.No.260 of 1989 for Probate of the said Will. By order dated 22.11.1989, Letters of Administration with the Will annexed of the property and credits of O.R. Subramanya Iyer were granted by this Court in favour of the petitioner. The Probate itself was issued on 08.02.1990. According to him, he filed an inventory of the said property and credits besides rendering a true account of the estate of the deceased showing the assets that had come into his hands. While the application for grant of Probate was presented in this Court, the customary method of calling for the report of the first respondent - District Collector, for the valuation of the property was done. However, the first respondent issued a notice under Section 59(1) of the Tamil Nadu Court Fees and Suits Valuation Act,1955, (in short "T.N.C.F. & S.V. Act") signed on 24.02.1992 and served on the petitioner on 27.02.1992, calling upon him to appear before the first respondent on 16.03.1992 for enquiry about the under-valuation of the property and for payment of additional court fee. The value was fixed at Rs.4,50,000/- per ground; and for three grounds and 1257 sq.ft., the land value was arrived at Rs.15,85,687.50 and building was valued at Rs.1,04,953.85 and the total value was arrived at Rs.16,33,861.35. For this notice, the petitioner submitted his objection on 16.03.1992. In the objection, the petitioner pointed out that the inventory required under Section 317 of the Indian Succession Act had already been made, and the six months period had expired and therefore the valuation of the property would not arise even under the Proviso to Section 59 (5). In the objection, the petitioner categorically stated that he did not accept the valuation indicated in the notice under Section 59(1) of the TNCF & SV Act and pointed out that even if any under valuation was to be found, the Collector could not move the Court at this juncture for holding an enquiry

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into the true value of the property by reason of Proviso to Section 59(5). The objection of the petitioner was overlooked and the first respondent passed an order to the effect that the Collector can proceed under Section 61(4) of the TNCF & SV Act. The petitioner again made a representation to the first respondent, however, ultimately, the second respondent directed payment of Rs.49,105/-. The petitioner therefore filed the writ petition for quashing the said proceedings.

4. The first respondent filed a counter affidavit wherein it is stated that the Assistant Registrar (Original Side), High Court, Madras in his letter dated 28.06.1989, forwarded copies of application for Probate and affidavit of assets filed by the writ petitioner in O.P.No.260 of 1989 for valuation of estate and a report as to the correctness of valuation was called for from the Tahsildar, Mylapore-Triplicane Taluk, in whose jurisdiction the property is situate. The net value of the property was arrived after examining the valuation report of the Tahsildar at Rs.16,90,641.35. A provisional notice under Section 59(1) of the TNCF & SV Act was issued on 14.02.1992 to the writ petitioner. The petitioner was also heard in person. His objections were considered and rejected. The petitioner was informed to amend the valuation and pay the additional court fee, failing which action would be taken to recover the same under Section 61(4) of the TNCF & SV Act, invoking the provisions of the Revenue Recovery Act.

5. It is not in dispute that on filing petition for Probate in O.P.No.260 of 1989, the Assistant Registrar (Original Side) of this Court in his letter dated 28.06.1989 forwarded copies of application for Probate and affidavit of assets filed by the writ petitioner for ascertaining the correct value. No doubt, an enquiry was conducted by the first respondent who directed the petitioner to amend the value. However, the petitioner maintained that the valuation given by him is correct and the valuation adopted by the Officers of the Department is not correct and refused to amend the valuation.

6. Chapter VI of the Tamil Nadu Court Fees and Suits Valuation Act,1955 deals with Probates, Letters of Administration and Certificates of Administration. As per Section 55, every application for the grant of Probate or Letters of Administration shall be accompanied by valuation of the estate in duplicate in the form set forth in Part I of Schedule III. Sub-section (2) enables the Court which receives the application for Probate or Letters of Administration to forward a copy of valuation to the Collector of the District, in which the estate is situate. It is not in dispute that the said provision was complied with. Section 57 speaks about the grant of Probate. It is clear that unless the Court is satisfied that a fee not less than the one that is prescribed has been paid on the basis of the net value of the estate as furnished in the valuation accompanying the application, or in the amended valuation filed under Section 59(3) of the Act, the Court shall not order Probate or grant of Letters of Administration. Section 59 speaks about the enquiry by the

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Collector. Sub-section (4) of Section 59 makes it clear that after Probate or Letters of Administration has been granted, when the applicant amends the valuation to the satisfaction of the Collector, or the Collector finds that a less fee has been paid than the fee payable according to the true value of the estate, the Collector shall proceed under Section 61(4) and recover the amount due. Sub-section (5) of Section 59 makes it clear that if the applicant does not amend the valuation, the Collector may move the Court before which the application for Probate or Letters of Administration was made to hold an enquiry to find out the true value of the property. Proviso to the above Section makes it clear that no such action shall be taken after expiry of six months from the date of exhibition of the inventory as required by Section 317 of the Indian Succession Act, 1925.

7. In our case, we have already referred to the fact that Probate was granted on 08.02.1990. We have also mentioned that in spite of direction of Collector, the petitioner did not amend the value, but he was disputing the same. In such circumstances, as per Sub-section (5) of Section 59 of TNCF & SC Act, the only course open to the Collector is to move the Court before which the application for Probate or Letters of Administration was made to hold an enquiry to find out the true value of the property. In other words, if there is no response from the applicant and if he is not willing to amend the value to the satisfaction of the Collector, it is open to the Collector to file a petition before the Court for appropriate direction. As rightly pointed out, the said action cannot be taken after the expiry of six months from the date of exhibition of the inventory as required by Section 317 of the Indian Succession Act, 1925. In the present case, the petitioner has asserted that after the grant of Probate, he exhibited inventory and submitted accounts. Considering all these factual details and the provisions as referred to above, as rightly pointed out by the learned counsel for the appellant, the first respondent cannot issue the impugned notices, which are not permissible.

8. It is contended that the Collector is obliged to proceed under Section 61(4) of the TNCF & SV Act, to collect the additional stamp duty, when Probate or Letters of Administration has already been issued by the Court. But the said contention is liable to be rejected. In this regard it is useful to refer the decision of this Court in the case of V.S. Shanmugam vs. The Personal Assistant (G) to the Collector of Madras reported in 2001 (3) MLJ 225. In similar circumstances, this Court negatived such stand taken by the respondents. The following discussion and the ultimate conclusion are relevant.

> " 5. The enquiry made by the Collector or his subordinate under Sec.59, Sub-sec.(1) and the result of that enquiry referred to in Sub-sec.(3) only enables the Collector to call upon the applicant for probate or letters to amend the valuation of the property. It does not empower the Collector to regard the extent of

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under-valuation as determined by him as final and binding on the applicant for probate or letters and such applicant is not bound to pay the amount determined by the Collector as the deficit.

6. The result of the enquiry only enables the Collector to call upon the applicant to amend the valuation. Where amendment is made, Sub-sec.(4) of Sec.59 as also Sec.64, Sub-sec.(4) of the Act will operate. If such amendment is not carried out by the applicant, the Collector has no alternative, but to move the Court which issued the probate letters to hold an enquiry into the true value of the property. The Proviso to Sub-sec.(5) prescribes the period of limitation of six months from the date of execution of the inventory within which the Collector must move the Court.

7. In this case, the Collector has filed a counter affidavit which makes it abundantly clear that the Collector has not moved the Court, and that there has been no determination made by the Court of the true value of the properties comprised in the inventory. The fact that the enquiry before the Collector dragged on for a long time cannot by itself be a reason for the Collector to assume the jurisdiction of the Court.

8. The assertion made by the Collector in the order dated 27.12.1993 that Sec.59(5) of the Act is not mandatory is without any merit. The Collector has clearly misconstrued the scope of the power conferred on the Collector.

9. The proceedings for grant of probate or letters of administration is initiated in the Court. Inventory is to be exhibited in Court. The Collector's role is only to assist the Court. If the determination made by the Collector is accepted by the applicant for probate and the valuation of the items are amended, it is only then the Collector can exercise powers under Sec.61(4). If the valuation is not amended in the manner decided by the Collector, the Collector must necessarily apply to the Court for the determination of the true value of the properties."

9. On going through the provisions of the Act, we are in agreement with the conclusion arrived at by the learned Judge. As rightly pointed out, if the determination made by the Collector is accepted by the applicant for Probate and the valuation of the items is amended, only then the Collector can exercise his powers under Section 61(4) of the TNCF & SV Act. On the other hand, if the valuation is not amended in the manner as determined by the Collector, undoubtedly, the Collector must move the Court, where the Probate or Letters of Administration was granted for the

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determination of the true value of the properties. Such recourse has not been followed by the respondents and as rightly pointed out, the impugned proceedings are not only liable to be quashed, but the respondents are also not permitted to move this Court at this juncture. The above relevant aspects have not been considered by the learned Judge and committed an error in dismissing the writ petition.

10. We intend to point out that it is the duty of the District Collector to file an application before the Original Side of this Court for directing the party to pay court fee, when such party disputes the differnece in valuation being adverted to by the Collector. It is brought to our notice that in recent years, there seems to be latitude on the part of the Collectorate in filing such application before this Court, resulting in loss of revenue to the State. The District Collector, Chennai is directed to act diligently in future by taking serious note of the aspect adverted to above.

Under these circumstances, the impugned proceedings of the Personal Assistant (General) to the Collector of Madras dated 18.05.1992 are quashed and the order of the learned single Judge dated 14.11.2000 made in W.P.No.22130 of 1993, is set aside. Consequently, the writ appeal is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kh

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To

1. The Personal Assistant (G)
   To Collector of Madras
   Statutory Authority under
   The Tamil Nadu Court Fees &
   Suits Valuation Act, 1955
   Office of the Collector of Madras
   Rajaji Salai, Madras.

2. The Collector of Madras
   Rajaji Salai, Madras.

+ 1 CC To Mrs.Kalpa Reddy, Advocate SR NO.55188

Writ Appeal No.42 of 2001

jrg(co)
Gp/27.11.

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